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Frequently Asked Questions on 8-hour Ozone Early Action Compacts

Volume 1

Introduction

As State and local agencies move forward to complete milestones in support of Early Action Compacts, they have asked a number of questions for clarification of previously issued guidance and its application to EAC areas. The following questions have been reviewed and responses prepared by EPA Regional Offices, OAQPS and OGC. This is a living document, and EPA intends to provide responses to additional questions as needed.

NOTE: EPA activities related to early action compacts (EACs) regarding deferral of the effective date of a nonattainment designation are not intended to prejudge the outcome of EPA's decision regarding boundary determinations for purposes of designating areas attainment or nonattainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). Further, the responses in this document are not intended to imply the future designation status of any county within a compact area. The designation process will not be completed until April 2004.

Violation of the 1-hour Ozone Standard

1. Will an area that signed an Early Action Compact prior to December 31, 2002, but violates the 1-hour standard during the 2003 or 2004 ozone season, be in violation of their Compact?

RESPONSE: An area that signed a Compact agreement with EPA by December 31, 2002, but experiences a subsequent violation of the 1-hour standard, may continue to participate in the program, provided the area continues to meet all milestones outlined in the Compact. An area with an Early Action Compact that subsequently violates the 1-hour standard may be required to conduct modeling that shows selected control measures will bring the area into attainment for both the 1-hour and the 8-hour ozone standard.

2. How would a 1-hour violation change the status of the Compact?

RESPONSE: If the effective date of the area's nonattainment designation is deferred, it is assumed they are in violation of the 8-hour ozone standard when designations are made April 15, 2004. As provided above, any violation of the 1-hour standard occurring after the Compact is signed does not change the status of the area, as long as the milestones in the compact continue to be met. If an area that subsequently violates the 1-hour standard after Compact signature is a maintenance area for the 1-hour standard (i.e., an area that was previously designated nonattainment for the 1-hour ozone standard, but was redesignated to attainment for that standard pursuant to section 107(d)(3)(E) of the Clean Air Act (CAA)), contingency measures in the area's 1-hour maintenance plan would be triggered pursuant to section 175A of the CAA. If

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an EAC area that subsequently violates the 1-hour standard after Compact signature is not subject to a maintenance plan, EPA intends to continue working with the area to implement the Compact. EPA could consider calling for other action requiring States to address the 1-hour standard, for example, issuing a SIP call under section 110 of the CAA. If an area is continuing to violate the 1-hour standard for several years, it could be an indication that the area will be unable to attain the 8-hour standard based on data from 2005-2007, as required of Compact areas.

Deferral of the Effective Date of Nonattainment Designation for 8-hour Ozone Standard

3. The cornerstone of the Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-Hour Ozone Standard states as one of its principles that a participating area will have a deferral of the effective date of any nonattainment designation and related requirements so long as all Compact terms and milestones are met. Exactly what are the related requirements that would be deferred? Are the specific nonattainment requirements deferred for areas with an 8-hour Ozone Compact documented in writing?

RESPONSE: Since the effective date of the nonattainment designation is deferred, all CAA requirements that would apply to an area designated nonattainment would not apply during the period of deferral. These requirements are generally specified in sections 172, 173, 176 and 182 of the CAA.

4. Can the state implementation plan (SIP) be developed to allow flexibility if legal or congressional changes provide for a different, better, or delayed attainment path? Would EPA delay designation under the 8-hour standard, or defer the effective date of designation or implementation of the requirements associated with the standard, for an area that enters into a Compact?

RESPONSE: The EPA anticipates promulgating designations for the 8-hour ozone standard by April 15, 2004, as provided in a consent decree in American Lung Association v. EPA (O.D.C. No. 02-2239). At that time Compact areas will be designated attainment or nonattainment. Compact areas that are designated nonattainment for the 8-hour standard, but continue to meet all milestones of the agreement, will be eligible for deferral of the effective date of the nonattainment designation. The EPA cannot anticipate congressional changes that may occur to the designation or implementation provision of the CAA. If Congress modifies provisions relevant to EPA's approach for Compact areas, we will issue guidance addressing such revisions.

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5. As the deferred effective date of the nonattainment designation continues for EAC areas so long as Compact milestones are met, will EPA change Part 81 each time to modify the effective date, or will Part 81 change only if a Compact area either misses a milestone or makes a submission that is not acceptable?

RESPONSE: EPA anticipates a sequence of three deferrals for Compact areas that are designated nonattainment and meet agreed-upon milestones, and we intend to change Part 81 to reflect each of the deferrals. EPA intends to revise Part 81 by April 15, 2004 to promulgate the first deferred effective date of the nonattainment designation until September 30, 2005, provided Compact areas meet the June 16, 2003 milestone, complete the June and December 2003 progress reports, and meet the March 31, 2004 milestone. Before September 30, 2005 (the date of the first deferral), EPA intends to promulgate the second deferred effective date until December 31, 2006, provided Compact areas complete the June and December 2004 progress reports, and meet the December 31, 2004 SIP submittal. Before December 31, 2006, EPA intends to promulgate the third deferral until April 15, 2008, provided Compact areas complete all remaining milestones and reports—the 2005-2007 progress reports, the implementation of measures by December 31, 2005, completion of the June 30, 2006 progress assessment, and attainment of the 8-hour ozone standard by December 31, 2007.

If a Compact area fails a milestone or EPA determines that the SIP is incomplete or deficient, we intend to end the deferral as soon as possible through a revision to Part 81. For example, if an area fails to submit the attainment demonstration SIP by December 31, 2004, EPA intends to revise Part 81 to end the deferral earlier than the deferral date of September 30, 2005.

6. Does signing a compact imply a presumption of nonattainment designation with a deferred effective date for the compact area or any portion of the compact area?

RESPONSE: No. EPA will base designations on monitoring data and other factors as described in a March 28, 2000 memorandum from John Seitz, EPA, Office of Air Quality Planning and Standards, "Boundary Guidance on Air Quality Designations for the 8-hour Ozone National Ambient Air Quality Standard." See page 4 (factors to consider in designating areas attainment or nonattainment).

Conformity

7. Does conformity apply to an EAC area currently operating under a 1-hour maintenance plan?

RESPONSE: Yes. Under section 176(c)(1)(B) of the CAA, conformity applies to areas designated as nonattainment, as well as areas operating under a maintenance SIP pursuant to section 175A of the CAA. Therefore, all areas (including EAC areas) with a maintenance plan for the 1-hour standard must continue implementing conformity requirements as long as the

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1-hour standard is in place.

EPA is proposing, as part of the rule to implement the 8-hour ozone standard, that conformity would not apply for purposes of the 1-hour ozone standard after the 1-hour standard and an area's 1-hour designation are revoked. EPA is also proposing a process for revoking the 1-hour standard and the timing of that revocation. Under that proposal the 1-hour standard for all Compact areas would be revoked 1 year after the effective date of the designation of attainment or nonattainment for the 8-hour standard. Therefore, on the 1-year effective date of the determination we make in April 2008 (approximately May or June of 2009), which will include the designation of Compact areas, the 1-hour standard would be revoked, and conformity for the 1-hour standard would no longer apply. If an EAC area is designated attainment for the 8-hour standard, the area would not be subject to conformity for the 8-hour standard. If the area is designated nonattainment for the 8-hour standard, conformity for the 8-hour standard would apply 1 year after the effective date.

8. Does conformity apply to compact areas that comply with the 1-hour ozone standard, but are not subject to a section 175A maintenance plan for the 1-hour standard?

RESPONSE: No, conformity for the 1-hour standard does not apply to compact areas that are not subject to a section 175A 1-hour maintenance plan. Conformity applies to designated nonattainment areas and maintenance areas. Because the effective date of the nonattainment designation will be deferred for EAC areas that are determined to be violating the 8-hour ozone standard, conformity will not apply to areas that continue to meet all Compact milestones

However, if the EAC area misses a compact milestone or EPA determines that a submission in response to a milestone is deficient or not approvable, the nonattainment designation would become effective, which would trigger conformity. There is a 1-year grace period between the time of the effective date of the nonattainment designation and the time that the area is subject to conformity.

Modeling

9. Will USEPA be issuing further guidance as to what level of detail is expected in air dispersion modeling? Is it assumed that new modeling will be required to illustrate the results of early action commitments? New modeling may not be achievable for several years.

RESPONSE: SIP-quality modeling is required for a demonstration of attainment for Early Action Compact areas. The EPA guidance for 8-hour ozone photochemical modeling is available in draft. (See "Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-hour Ozone NAAQS," May 1999, EPA-454/R-99-004) at: <http://www.epa.gov/scram001/guidance/guide/drafto3.pdf>. This document is expected to be

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finalized by the end of 2003. State and local agencies should also refer to questions and answers related to EAC modeling issues at: <http://www.epa.gov/scram001/guidance/guide/eac-ozone.pdf>. This document, which will be updated periodically with additional questions, as necessary, provides clarification of the draft modeling guidance and its application to EAC areas.

EPA would not require new modeling once the compact area has demonstrated attainment of the 8-hour standard.

Funding

10. Is there, or will there be, funding available from USEPA to assist with the implementation of Early Compact agreements?

RESPONSE: The EPA is prepared to provide expertise and advice to guide the selection and implementation of projects. EPA does not currently have grant monies specifically allocated to the 8-hour Early Action Compact program. EPA, however, does have grants for innovative projects that reduce emissions of ozone-forming pollutants. See the web site at: <http://www.epa.gov/otaq/rfp.htm> for a listing of many of the grant opportunities available to states, and local communities. Compact areas should work with their States or Tribal areas to apply for grant funds.

11. Are EAC areas eligible for CMAQ funding under the 8-hour ozone standard?

RESPONSE: Although EAC areas will be designated nonattainment in April 2004, the effective date of their designation will be deferred. Unless and until the nonattainment designation becomes effective, EAC areas are not considered nonattainment for the 8-hour standard. Consequently, these areas are not eligible for CMAQ funds for purposes of nonattainment planning under the 8-hour standard.

However, EAC areas that are currently subject to a maintenance plan for the 1-hour standard under section 175A of the CAA are eligible for CMAQ funds. These areas would remain eligible for CMAQ funds until the 1-hour standard is revoked as long as they were maintenance areas after December 31, 1997.

Maintenance Plan

12. Do EAC areas need a maintenance plan for the 8-hour ozone standard?

RESPONSE: The EAC protocol requires the area to do a maintenance analysis to address growth in emissions at least 5 years beyond 12/31/07, to ensure that the area will continue to attain the 8-hour standard. The protocol describes several methods that can be used to make a demonstration of future attainment, including, for example, an annual review of growth to ensure

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control measures and growth assumptions are adequate. If the annual review of growth shows that the control measures are not adequate to address growth in emissions, additional measures will be added to the plan. The plan must also detail a continuing planning process that includes modeling updates and modeling assumption verification (particularly growth assumptions) to evaluate, for example, air quality impacts from potential new source growth and from future transportation patterns. For additional information, see section E of the Protocol.

Redesignation to Attainment

13. Will areas need to be redesignated to attainment once the EAC areas attain the 8-hour standard by December 2007?

RESPONSE: EPA anticipates that Compact areas that attain the 8-hour ozone standard by December 2007 will be designated as attainment in Part 81 of the Code of Federal Regulations. EPA intends that these areas will not be required to be redesignated from nonattainment to attainment because the "nonattainment" designation was never effective.

SIP Credit

14. If an area implements controls under an MOA or Compact, will those reductions be able to be counted as control measures under a subsequent attainment SIP, if one is required?

RESPONSE: The 8-hour "Compact" is the Memorandum of Agreement. Reductions from any control measures implemented under the 8-hour Early Action Compact and approved into the SIP can be credited towards a subsequent attainment SIP, if one is required (see memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Gregg Cooke, Regional Administrator, Region VI, dated January 29, 2001, "Near-Term Discretionary Emission Reductions for Ozone NAAQS—Clarification.")

Early Reductions for PM-2.5 Standard

15. What are EPA's thoughts about how an 8-hour Ozone Early Action Compact would relate to States' efforts to meet the fine particulate standard? There may be overlap in control strategies to address the two pollutants. Is EPA considering a similar program for areas likely to be nonattainment for PM-2.5? What benefits exist for communities opting into the Ozone Flex Program if the possibility for designation as nonattainment for PM-2.5 is likely?

RESPONSE: There is strong interest within EPA to harmonize the implementation of the 8-hour ozone NAAQS and the PM-2.5 NAAQS. This would include harmonizing both the timing issues and the State implementation planning (control strategies) issues. There are strategy

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discussions underway in an attempt to identify early reduction measures that may reduce PM-2.5 concentrations in metropolitan communities. However, it is too early to know what benefits might exist for those communities opting into an 8-hour ozone EAC program in concert with a harmonized PM-2.5 program. Currently, no EAC program with deferred nonattainment designation exists for PM-2.5 areas as it does for ozone. EPA is considering, however, to allow expedited redesignation to attainment for areas that are violating the PM-2.5 NAAQS, but achieve reductions in emissions earlier than areas are otherwise required to achieve under the CAA.

1-hour Ozone Flex Program

16. How will the 1-hour Ozone Flex program complement or work with whatever strategy USEPA develops for implementation of the 8-hour ozone standard?

RESPONSE: The 1-hour Ozone Flex program and the 8-hour EAC program are NOT mutually exclusive. In fact, an area may find benefits from participating in both the 1-hour Ozone Flex program and the 8-hour EAC program, especially if an area in violation of the 8-hour standard also has experienced exceedances of the 1-hour standard and is concerned with possible future violation of the 1-hour standard. In the proposed implementation guidance for the 8-hour standard, EPA discusses incentives for areas that want to take early action for reducing ozone under the 8-hour standard.